

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 7
	:	
NIRAJ CHATURVEDI d/b/a	:	Case No.: 05-60079 (PCB)
GLOBAL GEM TRADERS,	:	
	:	
Debtor.	:	
NIRAJ CHATURVEDI d/b/a GLOBAL GEM	:	
TRADERS,	:	
	:	Civil Case No. 08-cv-00249 (LAP)
Appellant,	:	
	:	Hon. Loretta A. Preska, U.S.D.J.
-Against-	:	
	:	
RICHARD E. O'CONNELL, as Chapter 7	:	
Trustee for the Estate of Niraj Chaturvedi,	:	<b>ORAL ARGUMENT REQUESTED</b>
	:	
Appellee.	:	

**AFFIDAVIT OF NIRAJ CHATURVEDI IN OPPOSITION TO  
APPELLEE'S MOTION TO DISMISS APPEAL**

STATE OF PENNSYLVANIA)

COUNTY OF ) ss.:

NIRAJ CHATURVEDI, being duly sworn, deposes and says:

1. I am the debtor and appellant in the above-captioned appeal. I make this affidavit in opposition to the above-captioned appellee's (the "Appellee") motion to dismiss my appeal from an order, dated November 28, 2007 (the "Order") of Bankruptcy Judge Beatty that approved a certain settlement agreement between the Appellee and the Esmerian Group.

2. At all times up to and including the filing of the notice of Appeal in this matter I was a *pro se* litigant. I have no legal training. I am unfamiliar with the procedural intricacies for appeal from the Bankruptcy Court and, in particular, for after hours filings.

I have never had ECF filing privileges with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

3. I reside in Allentown, PA, approximately 92 miles from the Bankruptcy Court.

4. I have limited knowledge of computers and related electronic devices. I do not know how to use the internet.

5. On December 10, 2007, which I understood to be the last day to file the Notice of Appeal, I contacted a business acquaintance, Amit Sharma. Under my direction, he obtained a form Notice of Appeal.<sup>1</sup>

6. On December 10, 2007, I authorized Mr. Sharma to prepare the Notice of Appeal on my behalf.

7. Mr. Sharma has a PSC 2000 Series 2410 fax machine in his place of business. The telephone number of the fax machine, as well as his business telephone, is 212 789 9001.

8. At approximately 6:40 pm on December 10, 2007, under my direction from Allentown, Mr. Sharma personally placed the Notice of Appeal into his fax machine and sent it to 212 668 2878, which I understood to be the fax number for the Bankruptcy Court for the Southern District of New York. I am not aware of any prohibition on fax filings.

9. I understand that Mr. Sharma's fax machine is set to print a confirmation log of all faxes sent, and will identify those faxes that are successfully, or

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<sup>1</sup> It is my understanding that a web site linked to the web site of the United States Bankruptcy Court for the Southern District of New York, [www.uscourts.gov/bkforms/bankruptcy\\_forms/html](http://www.uscourts.gov/bkforms/bankruptcy_forms/html), maintains various bankruptcy forms, including form notices of appeal.

unsuccessfully, transmitted. A copy of the fax log for the Notice of Appeal that Mr. Sharma sent is annexed hereto as Exhibit 2.

10. The fax log from Mr. Sharma shows that a one page fax was sent to, and received by, fax number 212 668 2878 at 6:47 pm on December 10, 2007. I can determine that the fax was received because (as Mr. Sharma explained to me) the fax log printed "OK" in the "Result" column. The fax log was printed from Mr. Sharma's fax machine at 6:48 pm on December 10, 2007.

11. From this information, I conclude that the Bankruptcy Court received the Notice of Appeal on December 10, 2007 at 6:47 pm. I understand that the Notice of Appeal is reflected on Document 5 of the Record on Appeal, Bankruptcy Docket No. 76.

12. The next day, December 11, 2007, I received a telephone call from a clerk at the bankruptcy court. I believe his name was Anatin Rouzeau (who happens to be the employee in the Bankruptcy Clerk's office that entered the Notice of Appeal on the electronic docket). Mr. Rouzeau told me that the Bankruptcy Court received the faxed Notice of Appeal on December 10, 2007. He further told me that I needed to file that very day (December 11, 2007) the original Notice of Appeal and a filing fee for the appeal.

13. I immediately telephoned another business acquaintance, Mr. Ira Moskowitz, who arranged for the personal delivery of the original Notice of Appeal and required filing fee to the Clerk of the Bankruptcy Court.

By: /s/ Niraj Chaturvedi  
NIRAJ CHATURVEDI

Sworn to and Subscribed before me  
this 12<sup>th</sup> day of March, 2008.

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Notary Public  
Xavier R. Rivera, Notary Public  
Allentown, Lehigh County  
My Commission Expires Jan 6, 2010

# Exhibit 1

Dec 11 07 11:56a

Nirvana Intl Inc

12127899001

p. 1

Official Form 17  
(12/04)

## United States Bankruptcy Court

SOUTHERN District Of NEW YORK

In re NIRAJ CHATURVEDI/GLOBAL GEM TRADERS INC  
Debtor

Case No. 05-60079-PCB

Chapter 7

*[Caption as in Form 16A, 16B, or 16D, as appropriate]*

## NOTICE OF APPEAL

*NIRAJ*  
*CHATURVEDI*/GLOBAL GEM TRADERS INC, the plaintiff *[or defendant or other party]* appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding *[or other proceeding, describe type]* on the 28 day of 11, 2007.  
(month) (year)

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: 12/10/2007



Signed: NIRAJ CHATURVEDI/GLOBAL GEM TRADERS INC  
Attorney for Appellant (or Appellant, if not represented by an Attorney)

Attorney Name: \_\_\_\_\_

Address: 1136 WEST WALNUT ST, ALLENTOWN, PA-18102  
\_\_\_\_\_

Telephone No: 917 270 3922

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

*If a child support creditor or its representative is the appellant, and if the child support creditor or its representative files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.*

# Exhibit 2

**PSC 2000 Series 2410  
Personal Printer/Fax/Copier/Scanner**

**Log for  
Nirvana Intl Inc  
12127899001  
Dec 10 2007 6:48PM**

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**Last Transaction**

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Dec 10	6:47PM	Fax Sent	12126682878	0:35	1	OK

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